

# EXHIBIT 12

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

- - - - - x

CHASOM BROWN, MARIA NGUYEN,  
WILLIAM BYATT, JEREMY DAVIS, and  
CHRISTOPHER CASTILLO, individually  
and on behalf of all other similarly  
situated,

Plaintiffs, Case No.  
5:20-cv-03664-LHK

-against-

GOOGLE LLC,

Defendant.

- - - - - x

CONFIDENTIAL

Zoom video conference deposition of  
JESSE ADKINS, taken pursuant to notice,  
was held remotely, commencing April 14,  
2021, 11:00 a.m., before Leslie Fagin, a  
Stenographic Court Reporter and Notary  
Public in the State of New York.

- - -

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Page 2

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39 (Appearing via Zoom.)

Page 4

1 J. Adkins - Confidential  
2 THE VIDEOGRAPHER: Good morning.  
3 We are now on the record.  
4 Today's date April 14, 2021 and the  
5 time is now approximately 11:00 a.m.  
6 This begins the videotaped deposition of  
7 Jesse Adkins in the matter of Chasom  
8 Brown, et al., verse Google, LLC.  
9 Will the court reporter please  
10 swear in the witness.  
11 J E S S E A D K I N S, called as a  
12 witness, having been duly sworn by a  
13 Notary Public, was examined and testified  
14 as follows:  
15 EXAMINATION BY  
16 MR. RICHARDSON:  
17 Q. Good morning, Mr. Adkins. My name  
18 is Beko Richardson. I'm with Boies Schiller  
19 & Flexner and I represent the plaintiffs.  
20 Good morning.  
21 A. Good morning.  
22 MR. BROOME: Do you want to do  
23 introductions on your side and then we  
24 will do our side.  
25 MR. RICHARDSON: For plaintiffs,

Page 3

1  
2 APPEARANCES:  
3  
4 ALSO PRESENT:  
5 MATTHEW GUBIOTTI, Google Regal  
6 KATHY RUCCOLO, Notary Public  
7 DREW REIDMAN, Videographer  
8 Magna Legal Services  
9  
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Page 5

1 J. Adkins - Confidential  
2 myself and also Marc Mao, my partner, is  
3 attending the deposition. I will let  
4 other counsel for the plaintiffs  
5 introduce themselves.  
6 MS. BAEZA: This is Rossana Baeza  
7 from Boies Schiller for the plaintiffs,  
8 as well.  
9 MR. FRAWLEY: Alexander Frawley  
10 from Susman Godfrey for plaintiffs.  
11 MR. MCGEE: Ryan McGee from Morgan  
12 & Morgan, also for plaintiffs.  
13 MR. BROOME: Stephen Broome from  
14 Quinn Emanuel representing Google and  
15 the witness.  
16 Joining me are Matthew Gubioti  
17 from Google Regal and Joseph Ansong  
18 from Quinn Emanuel.  
19 Can I make a request that the  
20 attorneys who are not asking questions,  
21 stop their video so that we can -- the  
22 witness can stay focused on the  
23 questioner and myself. Thanks.  
24 And just a couple of other  
25 housekeeping matters. Beko, as we

Page 142

1 J. Adkins - Confidential

2 Website versus when they are not in a private  
3 browsing mode?

4 A. Again, I'm not aware of the service  
5 or we would even identify that. Our services  
6 work the same, regardless of which browser.  
7 Generally, we make our web services work for  
8 web standards and it's up to the browser to  
9 also work towards those web standards and so  
10 as long as we are all following the same  
11 standards, the internet works, so we don't  
12 design our services specific to a specific  
13 web browser with specific features. I think  
14 our services work when they have the required  
15 information that's necessary for the  
16 operation of the service and if the  
17 information is not available, the service  
18 won't operate.

19 Q. And that's based on how the Google  
20 APIs are structured to function, right?

21 A. Yes, that is correct, that we do  
22 not -- again, you are talking about private  
23 browsing mode, which I interpret as different  
24 browsers have different configurations.

25 Again, as long as those browsers

Page 144

1 J. Adkins - Confidential

2 A. Yes, I have used the word, profile.

3 Q. In connection with users of Google  
4 services, have you used the term, profile?

5 A. Not that I can recall.

6 Q. How have you used the term,  
7 profile, in your work for Google?

8 A. I would say we have, like, a  
9 profile of a type of partner or profile of a  
10 certain configuration. I mean, it's a pretty  
11 common word, it's got a lot of purpose and a  
12 lot of different meanings.

13 We certainly don't profile users,  
14 we don't talk about profiling users, that's  
15 not the intent or how our services work, so I  
16 use the word, profile, but certainly not what  
17 I think you are saying about profiling users.

18 Q. So using your definition, is it  
19 your testimony that Google has no profiles  
20 that contain the private browsing information  
21 Google collects when people visit the Court's  
22 Website?

23 MR. BROOME: Object to the form.

24 He didn't provide a definition.

25 Q. You provided your understanding of

Page 143

1 J. Adkins - Confidential

2 are working in accordance with web standards,  
3 these things should operate, they should  
4 still continue to function, so that's my  
5 answer, to the extent that we build services  
6 that work with web browsers, any web browser  
7 that is interoperable with web standards.

8 Q. Does Google have any profiles that  
9 include any of the private browsing  
10 information Google collects when people visit  
11 the Court's Website?

12 MR. BROOME: Object to the form.

13 A. I don't know what you mean by  
14 profile.

15 Q. Does Google have any profiles on  
16 users?

17 MR. BROOME: Object to the form.

18 A. I don't know what you mean by  
19 profiles.

20 Q. In your work for Google, you've  
21 never used the term, profile?

22 A. I didn't say that. I said, I don't  
23 know what you mean by profile.

24 Q. In connection with your work for  
25 Google, have you used the term, profile?

Page 145

1 J. Adkins - Confidential

2 profile in the context of your work for  
3 Google, correct?

4 A. No, I said I used the word and then  
5 I said I don't recall using the word,  
6 profiling users, in my work. I don't believe  
7 I gave you a definition.

8 Q. So you can't answer my question  
9 whether or not Google has any user profiles,  
10 period?

11 MR. BROOME: Sounds like you need  
12 to provide him an explanation of what  
13 you mean by profiles.

14 MR. RICHARDSON: Steve, can you let  
15 him testify. You can object, but I need  
16 the witness to testify, not you.

17 MR. BROOME: Objection, vague.

18 Q. Mr. Adkins, do you recall my  
19 question?

20 A. Yes, I do.

21 Q. Can you answer my question?

22 A. Yes, I cannot answer your question  
23 because I do not know what you mean by  
24 profile.

25 MR. BROOME: It's getting kind of

Page 186

1 J. Adkins - Confidential

2 youtube.com or google.com, were there any  
3 actions taken that were accounted for in  
4 terms of delivering advertisements on the  
5 Court's Website?

6 A. No, not that I am aware of.

7 MR. BROOME: Object to the form.

8 Q. What about when people visited the  
9 Court's Website in a private browsing mode,  
10 not logged into a Google account? Were the  
11 advertisements shown to them on the Court's  
12 Website ever modified based on prior actions  
13 by those users?

14 A. In the case when the user visits  
15 the Court's website in Chrome Incognito Mode,  
16 there is no prior information on that browser  
17 that is collected and sent and, therefore,  
18 the search term is the primary, in this case,  
19 only piece of data used for targeting the  
20 ads, and there is no refinements made based  
21 on prior user activity because there is no  
22 link between that. Those cookies don't exist  
23 or they can't -- let me use better phrasing.

24 Those cookies are not sent to the  
25 Google service in the Chrome Incognito Mode.

Page 188

1 J. Adkins - Confidential

2 prior actions by the person, is that correct?

3 MR. BROOME: Object to the form.

4 A. I think that helped clarify. I  
5 think we do not -- the Google services do not  
6 use any combination of identifiers to try to  
7 uniquely identify users, other than the  
8 Google logged in cookie and so, therefore,  
9 it's impossible because we don't conduct --  
10 that's against our privacy policy.

11 We wouldn't be able to make those  
12 kind of associations. We would never do  
13 something like that because it's against our  
14 privacy policy, therefore, no, we -- the only  
15 information we have about the user comes in  
16 the case of personalizing a search ad  
17 request, comes from the fact they are logged  
18 into a Google service, they've accepted our  
19 terms of service, they have ad  
20 personalization, continued the term to stay  
21 on, and they have full transparency and  
22 control, they can see exactly what  
23 information is used to personalize their ads.

24 There is absolutely no other  
25 mechanisms to tailor, personalize or alter

Page 187

1 J. Adkins - Confidential

2 Q. Just to be clear, separate and  
3 apart from any cookies, it's your testimony  
4 that when a person visited the Court's  
5 Website, not logged into a Google account and  
6 in an Incognito Mode, the advertisements  
7 would not be modified or adjusted in any way  
8 based on any prior actions taken by that  
9 person?

10 A. A clarification, are you implying  
11 that we used other methods, other than the  
12 Google logged in cookie to identify or, to  
13 use your words, fingerprint the user?

14 Q. I'm not implying anything. I'm  
15 just asking a question. I'm trying to  
16 clarify your answer, when you said that  
17 Google only uses the search run on the  
18 Court's Website to deliver advertisements to  
19 a person whose in Incognito Mode and not  
20 logged into a Google account, you  
21 specifically referred to cookies, and I just  
22 want to be clear that the advertisements  
23 delivered to those individuals, when they ran  
24 a search on the Court's Website, was not  
25 modified or adjusted in any way based on any

Page 189

1 J. Adkins - Confidential

2 the ads shown on the Court's Website because  
3 we don't use any information to try to  
4 uniquely identify users, other than in the  
5 cases where they're logged into Google and,  
6 again, all of those prior privacy methods and  
7 protections are in place, so there is no, in  
8 your words, fingerprinting, so we have no  
9 ability to alter the ads because we don't  
10 have any unique identifiers to try to do  
11 that, nor would we ever try to create one.

12 Q. If a user who has not logged into a  
13 Google account went to google.com and  
14 Incognito Mode and ran searches and then, in  
15 that same Incognito tab, went to the Court's  
16 Website and ran a search, would the ads  
17 delivered to that person be modified or  
18 adjusted in any way based on the searches  
19 that had been run in that tab previously in  
20 that Incognito browsing session?

21 A. No. The user has not created a  
22 Google account and has not, again, accepted  
23 the ads personalization and, you know, has  
24 full transparency, control and ability to  
25 delete that information, so, therefore,

Page 190

J. Adkins - Confidential  
again, in accordance with our privacy policy,  
we would never, again, an anonymous user,  
their prior searches on google.com, in the  
same session, same tab Incognito Mode would  
not alter the tabs on the Court's Website.  
There is no interaction between those two  
requests for ads.

Q. With respect to advertisements  
served by Google on websites, other than the  
Court's Website, have those ever been  
modified or adjusted in any way based on the  
information Google collects when people visit  
the Court's Website without being logged into  
and in Incognito Mode?

Does my question make sense?

A. No, it was long and I missed --

Q. I can break it up.

A. If I can take notes by the end, I  
forget what the beginning was, if you can go  
slower.

Q. My prior questions were focused on  
what Google used to deliver ads on the  
Court's website during the prior  
configuration.

Page 192

J. Adkins - Confidential  
them on other websites are in no way modified  
by the searches they performed on the Court's  
Website.

Q. Your answer just focused on the  
current configuration.

What about the prior configuration  
for the Court's Website?

A. I'm sorry, you asked about the  
current configuration. You are asking a new  
question now?

Q. Same question, prior Court's  
configuration?

A. Let me repeat it back to make sure  
I have the correct one. In the prior  
configuration with the ads, you are asking  
me, could the searches on the Court's Website  
affect ads delivered on other websites?

Q. Yes.

A. And nothing to do with Chrome or  
Incognito Mode?

Q. Let's start with that question and  
then we will go to the next part.

A. My answer is, if the user was  
logged in to Google services and we were able

Page 191

J. Adkins - Confidential

You understand that?

A. Yes.

Q. My questions now are how Google  
delivers ads on other websites after someone  
visits the Court's Website.

Do you understand that?

A. Yes.

Q. So my question is whether or not  
Google has served ads on other websites that  
are influenced or modified in any way based  
on the information Google collected when  
people visited the Court's Website, logged  
out, and in Incognito Mode?

MR. BROOME: Object to the form.

A. So in the current configuration of  
the Court's Website with programmable search  
engine, there is no request for ads. Those  
searches are only stored with the search  
service and, therefore, there is no  
interaction with ads.

The user has not accepted any type  
of privacy policy or anything like that, so,  
no, their searches on other websites are not  
altered or modified. The ads delivered to

Page 193

J. Adkins - Confidential  
to read the cookie that identifies the  
logged-in user, if the user has  
personalization turned on, then the prior  
configuration of the Court's Website which  
requested ads, those searches can be used for  
ads purposes later and so the user, again,  
could go to myactivity.google.com and see  
those searches that are associated with the  
ads they requested, delete them or turn off  
ads personalization if they wanted, but, yes,  
those searches that also requested ads could  
be used to modify the delivery of ads on  
other third party websites.

Q. What about when a user was in a  
private browsing mode, such as Incognito,  
could those searches on the Court's Website  
be used to modify the delivery of ads on  
other websites?

A. As long as the user did not log  
into a Google service on that same Incognito  
tab, the user was logged out, those searches  
and just the searches cannot be used to  
modify or be used in concert with ads.

I'm going to reference back my

Page 322

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EXHIBIT

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EXHIBIT PAGE

Exhibit 6 Programmable search engine 272

terms of service

Exhibit 7 Google's privacy policy 280

Page 323

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DEPOSITION SUPPORT INDEX

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Direction to Witness Not to Answer

Page Line Page Line Page Line

None

Request for Production of Documents

Page Line Page Line Page Line

None

Stipulations

Page Line Page Line Page Line

None

Questions Marked

Page Line Page Line Page Line

None

To Be Filled In

Page Line Page Line Page Line

None

Page 324

CERTIFICATE

I HEREBY CERTIFY that the witness,  
JESSE ADKINS, was duly sworn by me and that  
the deposition is a true record of the  
testimony given by the witness.

\_\_\_\_\_  
Leslie Fagin,  
Registered Professional Reporter  
Dated: April 14, 2021

(The foregoing certification of  
this transcript does not apply to any  
reproduction of the same by any means, unless  
under the direct control and/or supervision  
of the certifying reporter.)

Page 325

ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do hereby  
certify that I have read the foregoing pages,  
and that the same is a correct transcription  
of the answers given by me to the questions  
therein propounded, except for the  
corrections or changes in form or substance,  
if any, noted in the attached Errata Sheet.

JESSE ADKINS DATE

Subscribed and sworn  
to before me this  
day of \_\_\_\_\_, 2021.

My commission expires:

Notary Public